

Complaint

IN THE MATTER OF
MILTON SELBST ET AL. TRADING AS EXCELSIOR CLOAK
MANUFACTURING CO.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN
ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5803. Complaint, Sept. 1, 1950—Decision, Oct. 30, 1951

Where three individuals engaged in the manufacture, introduction into commerce, and sale therein of wool products as defined in the Wool Products Labeling Act of 1939—

Misbranding coats and other wool products in that they did not have affixed thereto stamps, tags or labels or other means of identification showing there constituent fibers, name or registered identification numbers of the manufacturer or other persons subject to said act, and other information required by said act and the Rules and Regulations promulgated thereunder:

Held, That such acts, practices and methods were in violation of said Act and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. John W. Addison*, trial examiner.

Mr. Jesse D. Kash for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Milton Selbst, Hyman Selbst, and Jacob Selbst, individually and as partners trading as Excelsior Cloak Manufacturing Co., hereinafter referred to as respondents, have violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondents, Milton Selbst, Hyman Selbst, and Jacob Selbst, are partners trading as Excelsior Cloak Manufacturing Co., with their office and principal place of business located at 240 Market Street, Philadelphia, Pa.

PAR. 2. The respondents are engaged in the introduction and manufacture for introduction into commerce and in offering for sale, sale, transportation, and distribution of wool products, as such products are defined in the Wool Products Labeling Act of 1939, in commerce,

Complaint

48 F. T. C.

as "commerce" is defined in said act and in the Federal Trade Commission Act. Many of respondents' said products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since July 15, 1941, respondents have violated the provisions of said act and said Rules and Regulations in the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said act and the rules and regulations.

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported, and distributed in said commerce as aforesaid, were coats and other products. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid products in violation of the provisions of said act and the rules and regulations by failing to affix to said garments a stamp, tag, label or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding five per centum of said total fiber weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was five per centum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the adulterating matter; (c) the percentages in words and figures plainly legible by weight of the wool contents of such wool product where said total weight of the wool product of nonfibrous loading, filling or wool product contains a fiber other than wool; (d) the name of the manufacturer of the wool product or the name or one or more persons subject to section 3 of said act with respect to such wool product, or the registered identification number of such person or persons, as provided for in rule 4 of the regulations as amended.

PAR. 4. The aforesaid acts, practices, and methods of respondents as alleged were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated October 30, 1951, the initial decision in the instant matter of trial examiner John W. Addison, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN W. ADDISON, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission on September 1, 1950, issued and subsequently served its complaint upon respondents Milton Selbst, Hyman Selbst, and Jacob Selbst, individually and as partners trading as Excelsior Cloak Manufacturing Co., charging them with the use of acts, practices and methods in violation of the Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated thereunder, and constituting unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act, in connection with the sale of coats and other wool products. On October 4, 1950, respondents filed their answer, in which answer they admitted all material allegations of facts set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final consideration by the above-named trial examiner theretofore duly designated by the Commission upon said complaint and answer thereto (all intervening procedure having been waived, proposed findings and conclusions not having been presented by counsel and oral argument not having been requested); and said trial examiner, having considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Milton Selbst, Hyman Selbst, and Jacob Selbst, are partners trading as Excelsior Cloak Manufacturing Co., with their office and principal place of business located at 240 Market Street, Philadelphia, Pa.

PAR. 2. The respondents are engaged in the introduction and manufacture for introduction into commerce and in offering for sale, sale, transportation and distribution of wool products, as such products are

Conclusion

48 F. T. C.

defined in the Wool Products Labeling Act of 1939, in commerce, as "commerce" is defined in said act and in the Federal Trade Commission Act. Many of respondents' said products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since July 15, 1941, respondents have violated the provisions of said act and said rules and regulations in the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said act and the rules and regulations.

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported and distributed in said commerce as aforesaid, were coats and other products. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid products in violation of the provisions of said act and the rules and regulations by failing to affix to said garments a stamp, tag, label, or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling or adulterating matter; (c) the percentages in words and figures plainly legible by weight of the wool contents of such wool product where said wool product contains a fiber other than wool; (d) the name of the manufacturer of the wool product or the name of one or more persons subject to section 3 of said act with respect to such wool product, or the registered identification number of such person or persons, as provided for in rule 4 of the regulations as amended.

CONCLUSION

The aforesaid acts, practices, and methods of respondents as found were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

393

Order

ORDER

It is ordered, That respondents Milton Selbst, Hyman Selbst, and Jacob Selbst, individually and as partners trading as Excelsior Cloak Manufacturing Co., or under any other name, jointly or severally, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, as "commerce" is defined in the acts aforesaid, do forthwith cease and desist from misbranding coats or other wool products as defined in and subject to the Wool Products Labeling Act of 1939, which contain, purport to contain, or in anyway are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said act, by failing to securely affix or place on such products a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of the wool product, exclusive of ornamentation, not exceeding 5 per centum of said total fiber weight of

- (1) wool,
- (2) reprocessed wool,
- (3) reused wool,
- (4) each fiber other than wool where said percentage by weight of such fiber is 5 per centum or more, and
- (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter.

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; *and provided further,* That nothing contained in this order shall be construed as limiting any applicable provisions of said act or the rules and regulations promulgated thereunder.

Order

48 F. T. C.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of October 30, 1951].

Syllabus

IN THE MATTER OF
EDWARD GOLDSTEIN ENTERPRISES, INC., ET AL.COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5792. Complaint, June 28, 1950—Decision, Nov. 3, 1951*

Where a corporation and the officer in control thereof, engaged through four subsidiaries in the operation of ladies' furnishings stores in Washington, Baltimore, Upper Darby, Pa., and New York City, and in the sale in commerce, among other things, of women's fur and cloth coats, dresses and suits;

In advertising their prices and operations in newspapers, by circulars, and through radio continuities, in connection with which they mailed several hundred thousand letters to residents living in the various cities in which said retail stores were located and in surrounding trade territories, and in which they enclosed as a "valuable gift" a trade check or coupon good for a "\$50 down payment" on any fur coat, cape or jacket at the store, with an attached stub "good for a \$20 down payment" on any cloth coat or suit or scarf—

(a) Represented that a store was going out of business, and that all of its merchandise was offered at a discount or savings of 50 percent or more from the usual or regular prices and that many articles were offered at less than wholesale cost;

The facts being that no merchandise was thus sold at a discount or saving of 50 percent or any other percent from the usual prices, and any articles which might have been offered at less than wholesale cost, were old, soiled and outmoded;

(b) Represented that the recipients of said coupons were entitled to use them as payments of \$50 or \$20 on the articles set forth, with a resulting saving or discount of said amounts;

The facts being that while the recipients of said trade checks or coupons were allowed to apply the amounts designated as a part of the price charged for the garments purchased, the prices of the garments were increased by adding to the regular prices the amount set out in the coupon, so that purchases made in connection therewith were actually at regular prices; and

(c) Falsely represented that the recipients of such coupons had been specially selected, when in fact letters containing the checks or coupons were mailed to all individuals listed in the telephone directories for the cities concerned and adjoining areas;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public in the aforesaid respects and thereby induce its purchase of their said products; and with the result that substantial trade was unfairly diverted to them from their competitors, many of whom do not misrepresent their practices or prices to their injury in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair methods of competition in commerce, and unfair and deceptive acts and practices therein.

Complaint

48 F. T. C.

As concerns the charge of the complaint that respondent retailer advertised falsely that it was going out of business: while it was still operated as a going concern when respondent's answer was filed, the record hardly formed sufficient basis for a conclusion that the representation was not made in good faith.

Before *Mr. John W. Addison*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Schaeffer, Goldstein & Esbitt, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the corporation and individuals set out in the caption hereof, hereinafter referred to as respondents, have violated the provisions of the said Act and it appearing to the Commission that a proceeding by it in respect thereof will be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Corporate respondent, Edward Goldstein Enterprises, Inc., is a corporation organized under the laws of the State of New York and having its office and principal place of business located at 315 Seventh Avenue, New York, New York. Respondent, Brentley's, Inc., is a corporation organized under the laws of the State of New York and having its office and principal place of business at 315 Seventh Avenue, New York. It is a subsidiary corporation owned and controlled by Edward Goldstein Enterprises, Inc. Brentley-Edwards is a trade name sometimes employed by Edward Goldstein Enterprises, Inc., and Brentley's, Inc. In addition to Brentley's, Inc., respondent Edward Goldstein Enterprises, Inc., controls and operates three subsidiary corporations, to-wit: Dranow's, Inc., Baltimore, Maryland, Dranow's of Upper Darby, Inc., Upper Darby, Pennsylvania, and Ben Dranow Furs, Inc., New York City, New York.

Respondent Edward Goldstein and Benjamin H. Dranow are the president and secretary-treasurer of said corporate respondents and other subsidiary corporations. The post office address of Edward Goldstein and Benjamin H. Dranow are Jacksonville, Illinois, and 315 Seventh Avenue, New York, New York, respectively. The principal office of said corporate respondents and subsidiary corporations and the records and accounts of their businesses are kept in corporate respondent's place of business in New York, New York. During all the times mentioned herein the individual respondents formulated,

directed, controlled and put into operation the practices of the corporate respondents.

PAR. 2. The corporate respondent Edward Goldstein Enterprises, Inc., and individual respondents are now and have been for more than one year last past operating ladies' furnishings stores under the name of Brentley's, Inc., and Brentley-Edwards located at 425 Seventh Street, N. W., Washington, D. C., and under the names of the subsidiary corporations at the locations set out in Paragraph One, and selling, among other things, fur and cloth coats, women's dresses and suits in commerce, as "commerce" is defined in the Federal Trade Commission Act. Their volume of business in such commerce is and has been substantial.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their products in commerce, respondents, in circulars and advertisements inserted in newspapers and by means of radio continuities, made various representations concerning the prices of their said merchandise and their business operations, among and typical of which, but not all inclusive, are the following:

GOING OUT OF BUSINESS
EVERYTHING MUST GO
OUR LOSS IS YOUR GAIN
SAVE 50% OR MORE

* * *

Brentley's, 425 7th Street, N. W.

GOING OUT OF BUSINESS
50% and more OFF ENTIRE STOCK!
Thousands and Thousands of Dollars
Worth of Fur Coats, Suits & Dresses
To Be Sacrificed
EVERYTHING MUST GO!
OUR LOSS IS YOUR GAIN
SALE NOW ON!

* * *

Brentley's, 425 7th Street, N. W.

Both of the aforesaid advertisements enumerate various fur products and other wearing apparel with stated regular and sale prices.

Complaint

48 F. T. C.

BRENTLEY-EDWARDS
FINE FURS AND FINE FASHIONS
425 Seventh St., N. W.
New Partnership Consolidates Huge
Stocks of Five Big Stores to Bring
Sensational Values in This Great
Opening Event
TOPPERS—COATS—FUR SCARFS—
FUR COATS—SUITS—DRESSES—
FUR CAPES—FUR JACKETS
Many below Original Wholesale Cost!
WALL TO WALL CLOSEOUT
A CLEAN SWEEP!
EVERYTHING GOES!

In connection with this advertisement various fur products and other wearing apparel are listed showing former prices and sale prices.

In conjunction with their radio advertising on behalf of the various retail stores respondents mailed several hundred thousand letters to residents living in the various cities in which said retail stores are located and surrounding trade territories, typical of which is the following:

CONGRATULATIONS!

here is your
RADIO
SURPRISE

LISTEN TO . . . WWDC . . .
1450 on your dial

You have been selected to
receive this valuable gift.

Yes, your name has been chosen by Brentley Fur's Melody Man to receive this surprise gift.

This gift is good for a \$50 down payment on any fur coat, fur cape, or fur jacket at Brentley Fur Store. Also, note the attached stub, which is good for a \$20 down payment on any cloth coat, cloth suit, or fur scarf in the store.

Brentley Furs are now starting one of the most tremendous promotion sales in the history of the fur business. To meet the demand, they have brought in hundreds of extra fine 1949 style furs for you to choose from.

The fur coats, capes, and jackets are priced from \$99 to \$1,500. The cloth coats, cloth suits, and fur scarfs start at \$39.95.

Cordially,

(S) BENJAMIN DRANOW.

BRENTLEY FURS
425 Seventh St. N. W.,
Washington, D. C.

399

Complaint

So-called checks or coupons were enclosed in these letters, a typical copy of which is as follows:

Brentley's WILL ACCEPT THIS STUB AS A CASH PAYMENT OF Twenty Dollars	ON ANY CLOTH COAT, SUIT OR FUR SCARF PURCHASED BETWEEN Feb. 1 and Mar. 1 Do Not Detach	WWDC . . . "Cowboy Hank's Rhythm Roundup" Brentley's Fine Furs 425 Seventh Street, N. W., Washington, D. C. TO THE ORDER OF <u>THE SUM OF \$50.00</u> Brentley's Agrees to Accept as a Money Payment of <u>THE SUM OF * * * * * 50 DOL'S 00 CTS.</u> On any Fur Coat, Cape, Jacket or Stole Pur- chased in the Store Between <u>Feb. 1</u> and <u>March 1</u> ONLY ONE CHECK GOOD ON ANY ONE PURCHASE Brentley's Fine Furs Benjamin Dranow
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PAR. 4. By means of the statements and representations set out in the aforesaid advertisements, respondents represented that the store operated at different times under the names of Brentley's, Inc., and Brentley-Edwards was going out of business; that all the merchandise in the store operated as Brentley's, Inc., was offered for sale at a discount or savings of 50% or more from the usual or regular prices; that many of the articles for sale in the store operated as Brentley-Edwards were offered for sale at less than wholesale cost; that the recipients of the coupons were entitled to use them as payments of \$50 on the regular price of a fur coat, jacket, cape or stole and \$20 on a cloth coat, suit or fur scarf on presentation of the coupons during a specific time, thereby resulting in a savings or discount of \$50 or \$20 as the case might be from the usual and regular prices of the garments purchased and that the recipients had been especially selected to receive such coupons.

PAR. 5. The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact, the store operated as Brentley's, Inc., and Brentley-Edwards did not go out of business and said store has continued to operate and now operates as a going concern. The merchandise offered for sale by Brentley's, Inc., was not sold at a discount or savings of 50% or any other percent from the usual or regular prices. No significant portion of the stock of the store operated as Brentley-Edwards was offered for sale at less than wholesale cost. Such articles as may have been so offered were old,

soiled and outmoded merchandise. While the recipients of the checks or coupon were allowed to apply the appropriate amounts designated therein as a part of the price charged for the garments purchased, such applications did not result in any savings or discounts from the usual, customary or regular prices for such garments since such prices were increased by adding thereto the amount set out in the coupon, with the result that purchases made in connection with the coupons were actually at regular or usual prices. Persons receiving said checks or coupons were not especially selected. On the contrary, the letters containing the checks or coupons were mailed to all individuals listed in the telephone directories for the cities in which the various retail stores were located, and adjoining areas.

PAR. 6. Respondents, in the conduct of their various retail stores, have been and are in substantial competition, in commerce, with corporations, individuals, and others engaged in the sale of the same kinds of merchandise as that sold by respondents. Among such competitors are many who do not make any misrepresentations concerning their practices, the prices charged for their merchandise or otherwise.

PAR. 7. The use by the respondents of the foregoing false and misleading representations had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that said representations were true, and caused a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondents' said products. As a result thereof, substantial trade has been unfairly diverted to respondents from their competitors. In consequence thereof, injury has been and is being done to respondents' competitors in commerce.

PAR. 8. The acts and practices of the respondents, as herein alleged, were all to the prejudice and injury of the public and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated November 3, 1951, the initial decision in the instant matter of trial examiner John W. Addison, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN W. ADDISON, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and pursuant to the authority vested in it by said Act, the Federal Trade Commission on June 28, 1950, issued and subsequently served its complaint upon the corporations and individuals named in the foregoing caption, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. On September 8, 1950, Benjamin H. Dranow, individually and as Secretary and Treasurer of Edward Goldstein Enterprises, Inc., and of Brentley's Inc., filed his answer, in which answer he admitted all of the material allegations of facts set forth in said complaint and waived all intervening procedure and further hearing as to the said facts, upon condition, however, that the complaint be dismissed as to respondent Edward Goldstein. Thereafter, the proceeding regularly came on for final consideration by the above-named trial examiner theretofore duly designated by the Commission upon said complaint and answer thereto and motion by counsel supporting the complaint to dismiss the complaint as to respondent Edward Goldstein (all intervening procedure having been waived, proposed findings and conclusions by counsel not having been presented and oral argument not having been requested); and the trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Edward Goldstein Enterprises, Inc., is a corporation organized under the laws of the State of New York and having its office and principal place of business located at 315 Seventh Avenue, New York, New York. Respondent Brentley's, Inc., is a corporation organized under the laws of the State of New York and having its office and principal place of business at 315 Seventh Avenue, New York, New York. It is a subsidiary corporation owned and controlled by Edward Goldstein Enterprises, Inc. Brentley-Edward is a trade name sometimes employed by Edward Goldstein Enterprises, Inc., and Brentley's, Inc. In addition to Brentley's Inc., respondent Edward Goldstein Enterprises, Inc., controls and operates three subsidiary corporations, to-wit: Dranow's Inc., Baltimore, Maryland, Dranow's of Upper Darby, Inc., Upper Darby, Pennsylvania, and Ben Dranow Furs, Inc., New York, New York.

Findings

48 F. T. C.

Respondents Edward Goldstein and Benjamin H. Dranow are the President and Secretary-Treasurer of said corporate respondents and other subsidiary corporations. The post office address of Edward Goldstein and Benjamin H. Dranow are Jacksonville, Illinois, and 315 Seventh Avenue, New York, New York, respectively. The principal office of said corporate respondents and subsidiary corporations and the records and accounts of their businesses are kept in corporate respondents' place of business in New York, New York. During all the times mentioned herein the individual respondent Benjamin H. Dranow has formulated, directed, controlled and put into operation the practices of the corporate respondents. Respondent Edward Goldstein took no part in the practices found herein. His only interest in the corporate respondents is as an investor. He put the money in but Benjamin H. Dranow runs the businesses.

PAR. 2. Corporate respondent Edward Goldstein Enterprises, Inc., and individual respondent Benjamin H. Dranow are now and have been for more than one year last past operating ladies' furnishings stores under the name of Brentley's, Inc., and Brentley-Edwards located at 425 Seventh Street, N. W., Washington, D. C., and under the names of the subsidiary corporations at the locations set out in Paragraph One, and selling, among other things, fur and cloth coats and women's dresses and suits in commerce, as "commerce" is defined in the Federal Trade Commission Act. Their volume of business in such commerce is and has been substantial.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their products in commerce, respondents, in circulars and advertisements inserted in newspapers and by means of radio continuities, made various representations concerning the prices of their said merchandise and their business operations, among and typical of which, but not all-inclusive, are the following:

GOING OUT OF BUSINESS
EVERYTHING MUST GO
OUR LOSS IS YOUR GAIN
SAVE 50% OR MORE

* * *

Brentley's, 425 7th Street, N. W.

399

Findings

GOING OUT OF BUSINESS
 50% and more OFF ENTIRE STOCK!
 Thousands and Thousands of Dollars
 Worth of Fur Coats, Suits & Dresses
 To Be Sacrificed
 EVERYTHING MUST GO!
 OUR LOSS IS YOUR GAIN
 SALE NOW ON!

* * *

Brentley's, 425 7th Street, N. W.

Both of the aforesaid advertisements enumerate various fur products and other wearing apparel with stated regular and sale prices.

BRENTLEY-EDWARDS
 FINE FURS AND FINE FASHIONS
 425 Seventh St., N. W.
 New Partnership Consolidates Huge
 Stocks of Five Big Stores to Bring
 Sensational Values in This Great
 Opening Event
 TOPPERS—COATS—FUR SCARFS—
 FUR COATS—SUITS—DRESSES—
 FUR CAPES—FUR JACKETS
 Many below Original Wholesale Cost!
 WALL TO WALL CLOSEOUT
 A CLEAN SWEEP!
 EVERYTHING GOES!

In connection with this advertisement various fur products and other wearing apparel are listed showing former prices and sale prices.

In conjunction with their radio advertising on behalf of the various retail stores, respondents mailed several hundred thousand letters to residents living in the various cities in which said retail stores are located and surrounding trade territories, typical of which is the following:

CONGRATULATIONS!

here is your
 RADIO
 SURPRISE

LISTEN TO . . . WWDC
 1450 on your dial

You have been selected to receive this valuable gift.

Yes, your name has been chosen by Brentley Fur's Melody Man to receive this surprise gift.

Findings

48 F. T. C.

This gift is good for a \$50 down payment on any fur coat, fur cape, or fur jacket at Brentley Fur Store. Also, note the attached stub, which is good for a \$20 down payment on any cloth coat, cloth suit, or fur scarf in the store.

Brentley Furs are now starting one of the most tremendous promotion sales in the history of the fur business. To meet the demand, they have brought in hundreds of extra fine 1949 style furs for you to choose from.

The fur coats, capes, and jackets are priced from \$99 to \$1,500. The cloth coats, cloth suits, and fur scarfs start at \$39.95.

Cordially,

(S) BENJAMIN DRANOW.

BRENTLEY FURS

425 Seventh St., N. W.,
Washington, D. C.

So-called checks or coupons were enclosed in these letters, a typical copy of which is as follows:

Brentley's WILL ACCEPT THIS STUB AS A CASH PAYMENT OF Twenty Dollars	ON ANY CLOTH COAT, SUIT OF FUR SCARF PURCHASED BETWEEN Feb. 1 and Mar. 1	Do Not Detach
WWDC . . . "Cowboy Hank's Rhythm Roundup"		
Brentley's Fine Furs 425 Seventh Street N. W., Washington, D. C.		
TO THE ORDER OF		
THE SUM OF \$50.00		
Brentley's Agrees to Accept as a Money Payment of		
THE SUM OF * * * * 50 DOL'S 00 CTS.		
On any Fur Coat, Cape, Jacket or Stole Purchased in the Store Between Feb. 1 and March 1		
ONLY ONE CHECK GOOD ON ANY ONE PURCHASE		
BRENTLEY'S FINE FURS Benjamin Dranow		

PAR. 4. By means of the statements and representations set out in the aforesaid advertisements, respondents represented that the store operated at different times under the names of Brentley's, Inc., and Brentley-Edwards was going out of business; that all the merchandise in the store operated as Brentley's, Inc., was offered for sale at a discount or saving of 50% or more from the usual or regular prices; that many of the articles for sale in the store operated as Brentley-Edwards were offered for sale at less than wholesale cost; that the recipients of the coupons were entitled to use them as payments of \$50 on the regular price of a fur coat, jacket, cape or stole and \$20 on a cloth coat,

suit or fur scarf on presentation of the coupons during a specific time, thereby resulting in a saving or discount of \$50 or \$20 as the case might be from the usual and regular prices of the garments purchased and that the recipients had been especially selected to receive such coupons.

PAR. 5. The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact, the merchandise offered for sale by Brentley's, Inc., was not sold at a discount or saving of 50% or any other percent from the usual or regular prices. No significant portion of the stock of the store operated as Brentley-Edwards was offered for sale at less than wholesale cost. Such articles as may have been so offered were old, soiled and outmoded merchandise. While the recipients of the checks or coupons were allowed to apply the appropriate amounts designated therein as a part of the price charged for the garments purchased, such applications did not result in any savings or discounts from the usual, customary or regular prices for such garments since such prices were increased by adding thereto the amount set out in the coupon, with the result that purchases made in connection with the coupons were actually at regular or usual prices. Persons receiving said checks or coupons were not especially selected. On the contrary, the letters containing the checks or coupons were mailed to all individuals listed in the telephone directories for the cities in which the various retail stores were located, and adjoining areas. Although the store operated as Brentley's, Inc., and as Brentley-Edwards did not go out of business but was still operated as a going concern when the answer herein was filed, the record hardly forms sufficient basis for a conclusion that the representation that it was going out of business was not made in good faith.

PAR. 6. Respondents, in the conduct of their various retail stores, have been and are in substantial competition, in commerce, with corporations, individuals, and others engaged in the sale of the same kinds of merchandise as that sold by respondents. Among such competitors are many who do not make any misrepresentations concerning their practices, the prices charged for their merchandise or otherwise.

PAR. 7. The use by the respondents of the foregoing false and misleading representations had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that said representations were true, and caused a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondents' said products.

Order

48 F. T. C.

As a result thereof, substantial trade has been unfairly diverted to respondents from their competitors. In consequence thereof, injury has been and is being done to respondents' competitors in commerce.

CONCLUSION

The acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Edward Goldstein Enterprises, Inc., a corporation, Brentley's, Inc., a corporation, their officers, representatives, agents and employees, and Benjamin H. Dranow, individually and as an officer of said corporate respondents, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of fur or cloth coats, dresses, suits, or other women's furnishings in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing to customers or prospective customers, by use of trade checks or coupons or otherwise, that suits, coats or other articles of women's furnishings offered by respondents or any respondent have greater selling prices than the prices at which the same are so offered, when such is not the fact;

2. Representing that many coats, suits, dresses or other articles of women's furnishings are offered for sale by any respondent at less than wholesale cost when in fact no substantial portion of the stock in the store making the offer or only old, soiled or outmoded merchandise is so offered and sold;

3. Representing that fifty-dollar, twenty-dollar or other trade checks or coupons are sent only to especially selected persons, when in truth and in fact the trade checks or coupons are mailed to all individuals listed in the telephone directory for the city and adjoining area in which the store sending the trade checks or coupons is located; and

It is further ordered, That this proceeding be, and it is, dismissed hereby as to respondent Edward Goldstein without prejudice to the right of the Commission to institute further proceedings should future facts warrant.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents Edward Goldstein Enterprises, Inc., a corporation, Brentley's, Inc., a corporation, and Benjamin H. Dranow, individually and as an officer of Edward Goldstein Enterprises, Inc., and Brentley's, Inc., shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of November 3, 1951].

IN THE MATTER OF
H. HAROLD BECKO TRADING AS HAROLD'S STUDIO

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5739. Complaint, Feb. 6, 1950—Decision, Nov. 8, 1951

The term "Gold-Tone" has a definite meaning in the profession of photography and connotes that a finishing process which involves the use of a finishing paint containing gold chloride or other gold salts, has been used in producing a picture thus designated.

Where an individual, with a studio and finishing plant at Winona, Minn., and with branch studios at Rochester, Minn., and Fargo, N. Dak., and, formerly at Fond du Lac, Wis., engaged in making photographs, including tinted or colored enlargements and reductions, and in the interstate sale and distribution thereof; and of frames; through advertisements in newspapers, radio broadcasts, circulars, cards, certificates and coupons, and by other means—

- (a) Represented both directly, and through the contest title itself, that cash awards of \$2500 were made to the winner of his "\$2500 Charming Child Contest";

The facts being that the prizes consisted of United States Savings Bonds in the face value of \$500, forty-eight prizes of hand-colored photographs valued by him at \$15 each, and twenty-four merchandise certificates awarded each week for twelve weeks, with a value of \$4 each, and good only in exchange for merchandise; the value of all which awards aggregated \$2,372, including the bonds at face value and the hand-colored photograph prizes at the value arbitrarily fixed by him;

- (b) Represented that all children between the ages of six months and ten years whose photographs were taken at his studios were eligible for prizes under said "\$2500 Charming Child Contest" and that the contest was conducted in a fair and impartial manner with awards made solely on merit;

The facts being that only those placing orders for photographs were considered (with some early exceptions); and the awarding was influenced by the size of the purchase order and the possibility of obtaining such an order;

- (c) Represented that various persons were specially selected to receive certain of his offers; when in fact said offers were available to all comers on an equal basis;

- (d) Represented that certain photographs offered and sold by him were genuine "Gold Tone" photographs; when in fact he had produced no photographs through the use of the gold-tone process since about 1947, and had no facilities for such finishing;

- (e) Represented that free prizes would be awarded to the three most photogenic children and girls photographed at the place designated in the locality where the customer resided, and that with the purchase of twelve or more pictures he would give a colored photograph free and without cost;

The facts being that purchase of other merchandise was required to receive any of said so-called "free" prizes; prizes were not awarded to the three most

photogenic, but it was his practice to restrict to one the number of winners selected in each community; and the cost of the colored photograph represented as given free with the purchase of twelve or more photographs, was covered by the cost to the purchaser of the photograph order; and

- (f) Represented that he was a member of the Minnesota State Photographers Association; when in fact there was no such association, and his membership in the Minnesota Professional Photographers Association terminated prior to the period during which his contests were being conducted;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby cause it to purchase a substantial quantity of his products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

As respects the "\$2500 Charming Child Contest," and its advertising (which in some cases contained no reference to the fact that the awards in major part were to be conferred in merchandise, and in others accentuated the aforesaid title through much larger type), it was the opinion of the Commission that the title itself constituted a representation that any and all awards to be made hereunder would be conferred in money, and that such connotation stemmed from the literal meaning of the title itself, and it was its further view that the insertion elsewhere in said advertisement of additional language with respect to merchandise and other articles was as a confusing contradiction to the title, and did not suffice to dispell the erroneous impressions which such a contest title would engender.

As respects additional charges that respondent's photographs were not outstanding, as represented, that various offers were not "special" offers at reduced prices, that certain of the photographs were not "hand colored" or "hand colored with oil paints", that he was not the official photographer for the "Babee National Contest", that samples were of better grade and quality than the product actually used, that frames were shipped to customers without order, that fictitious price lists were employed, and that the word "gold" was misused: the Commission upon consideration of the record, including contentions of respective counsel in support of their appeals from the initial decision, was of the view that dismissal without prejudice was warranted with respect to all said charges, including certain charges which had not been embraced within said initial decision.

Before *Mr. James A. Purcell*, trial examiner.

Mr. Charles S. Cox and *Mr. Lee J. Farnsworth* for the Commission.
Lanier & Lanier, of Fargo, N. Dak., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that *H. Harold Becko*, an individual trading as *Harold's Studio*, hereinafter referred to as

Complaint

48 F. T. C.

respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, H. Harold Becko, also known as Harry Becko, Harold Zavatsky and Harold Zavatsho, is an individual trading as Harold's Studio, with main offices and principal place of business, including main studio and finishing plant, located at 111 West Third Street, Winona, Minnesota, with branch studios operated respectively at Rochester, Minnesota; Fargo, North Dakota; and Fond du Lac, Wisconsin. Respondent is now and for more than three years last past has been engaged in the business of making, processing and selling photographs and in the sale of picture frames therefor.

PAR. 2. Respondent, during the period stated herein, has engaged in the sale and distribution of photographs of various types, including tinted or colored enlargements or reductions of photographs, and of frames therefor, in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his said business, respondent causes and has caused his said products, when sold, to be transported from his place of business in the State of Minnesota to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products, in commerce, between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in such commerce is and has been substantial.

PAR. 3. In the course and conduct of his business as aforesaid, and for the purpose of inducing the purchase of his wares, respondent has made, through advertisements in newspapers, radio continuities, circulars, cards, certificates, coupons, bonds, and other means, various representations concerning himself, his photographs, the persons to whom they are offered and the terms upon which they may be purchased, a "Charming Child Contest" conducted by him and "Free Prizes" and other "free" goods. Among and typical of the said representations are the following:

Enter your child in the Charming Child Contest today. \$2500 in cash prizes * * * have your child's picture taken in one of the Harold's Studios * * * children between the ages of 6 mos. and 10 years, are eligible * * *

You have been selected to have a beautiful 5 x 7 enlarged portrait * * * 79¢ * * *

412

Complaint

One beautiful 8 x 10 Gold Tone photograph

One of the country's outstanding photographers will be there to take your photograph

Free prizes will be awarded to the three most photogenic children and girls

Members * * * Minnesota Photographers Association

Official photographer Babee National Contest

Special low contest prices

Special contest rate

Special \$1.79

Special \$1.00

* * * A very special offer

Special graduation bond

Special \$35.00 wedding offer

All work guaranteed

With orders of 12 or more 5 x 7 photographs we will give you one beautiful 8 x 10 colored picture FREE

Hand colored photograph

Portrait hand colored in oils

PAR. 4. In the manner aforesaid, respondent represents and has represented that cash awards of \$2500 are made to the winners of his Charming Child Contest; that all children between the ages of six months and ten years are eligible for all prizes when the child's picture is taken at Harold's Studio, for which there is no charge, irrespective of whether or not additional pictures are purchased from respondent; that said contest is conducted in a fair and impartial manner and that the awards will be made on merit.

That various persons to whom certain of respondent's offers have been made were specially selected to receive them; that certain of the photographs offered and sold by him are genuine Gold Tone photographs; that respondent's photographers are among the country's outstanding photographers; that free prizes will be awarded to the three most photogenic children and girls; that respondent is a member of the Minnesota Photographers Association; that respondent is the official photographer for the "Babee National Contest."

That various of respondent's offers are "special" and that the prices quoted in such offers are less than the prices regularly charged by respondent for the pictures described in such offers; that all of respondent's photographs are guaranteed; that respondent will give with the purchase of 12 or more 5 x 7 pictures a colored 8 x 10 picture free; that certain of respondent's photographs are hand colored and others are hand colored with oil paints.

PAR. 5. In truth and in fact respondent's statements and representations are false and misleading. Respondent's \$2500 Charming Child Contest is not one in which cash awards of \$2500 are made, nor is any part of such contest award made in cash; all children between

the ages of six months and ten years, who have their pictures taken by respondent, are not eligible for all or any of the prizes as only those placing orders for pictures are considered; the prizes are not awarded on a merit basis but on the basis of the size of the purchase order or the probability of obtaining an order from the parents or guardian of the child photographed.

The persons represented as having been selected to receive certain of respondent's offers are not specially selected nor are they made to a specially selected limited number of persons. The photographs represented as genuine Gold Tone photographs are not genuine Gold Tone photographs. Respondent's photographers are not in any sense of the word "outstanding," but on the contrary are frequently persons without previous training in photography and their work is on occasion inferior and unskilled. There is no Babee National Contest. Respondent's offers are not "special" in any sense of the word, but on the contrary are made continuously and are his usual offers, available to everyone alike; the pictures represented as "free" are not gifts or gratuities, and the purchase of other pictures is required in order to obtain them. None of respondent's colored photographs are colored by hand, or with oil paints. Respondent does not award free prizes to the three most photogenic children and girls and the only award made is a cheap paper certificate entitled "Contest Winner First Prize." There is no such organization as the Minnesota Photographers Association; there is an organization known as the Minnesota Professional Photographers Association but respondent is not a member thereof, nor was he a member thereof at the time said representations and statements were made.

PAR. 6. In addition to the foregoing statements and representations made in the manner aforesaid, respondent has been and is engaged in the following acts and practices:

(a) Displaying samples of photographs and frames to customers and prospective customers of a better grade and quality than those actually shipped to customers when ordered;

(b) Shipping customers picture frames which were not ordered and making a charge therefor;

(c) Representing by means of fictitious price lists that the regular price of the goods in question is greater than the price being quoted to the customer or prospective customer;

(d) Representing goods as "guaranteed" without disclosing the extent and terms of the guarantee.

PAR. 7. The use by respondent of the foregoing false and misleading statements and representations and acts and practices has had the

capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the said statements and representations are true and into the purchase of substantial quantities of respondent's goods.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF
COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 6, 1950, issued and subsequently served its complaint in this proceeding upon the respondent H. Harold Becko, an individual trading as Harold's Studio, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondent's answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission, theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. On November 20, 1950, the trial examiner filed his initial decision.

This matter thereafter came on to be heard by the Commission upon an appeal from said initial decision filed by counsel for respondent and an appeal filed by counsel supporting the complaint, briefs in support of and in opposition to said appeals, and oral argument, and the Commission having duly considered and ruled upon said appeals and having considered the record herein, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order, the same to be in lieu of the initial decision of the trial examiner:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, H. Harold Becko, also known as Harry Becko, Harold Zavatsky and Harold Zavatsho, is an individual trading under the name and style of Harold's Studio, with his main office and principal place of business, including his principal studio and finishing plant, located at No. 111 West Third Street, Winona, Minnesota. Respondent also operates and conducts branch studios at

Findings

48 F. T. C.

Rochester, Minnesota, and Fargo, North Dakota, and formerly maintained a branch studio at Fond du Lac, Wisconsin. Respondent is now, and for more than three years last past has been, engaged in the business of making, processing and selling photographs and in the sale of frames therefor.

PAR. 2. Among the items sold and distributed by respondent are photographs, tinted or colored enlargements and reductions thereof, and frames. Respondent causes and has caused his products, when sold, to be transported from his place of business in the State of Minnesota to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in his products in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in such commerce is and has been substantial.

PAR. 3. In the course and conduct of his business, as aforesaid, and for the purpose of inducing the purchase of his merchandise, respondent has made through advertisements in newspapers, radio broadcasts, circulars, cards, certificates and coupons, and by other means, various representations concerning himself, his photographs, the persons to whom they are offered, and the conditions under which his photographs may be secured and purchased, and in reference to a "\$2,500.00 Charming Child Contest" conducted by him. Among such statements and representations are the following:

WATCH TUESDAY'S PAPER for Harold's Studios' \$2500 Charming Child Contest winners for the week. Enter now. Out of town folks need no appointment. Harold's Studios, 508 1st Ave., N., Fargo.

* * * enter Harold Studio's \$2,500 Charming Child Contest * * *.

\$2,500.00 "Charming Child" CONTEST WINNERS FOR THIS WEEK ARE * * *.

Enter your child in the Charming Child Contest Today. \$2,500 in cash prizes * * * have your child's picture taken at one of the Harold's Studios. * * * children between the ages of 6 mo. and 10 years are eligible. * * *.

You have been selected to have a beautiful 5 x 7 enlarged portrait * * * 79¢ * * *.

One Beautiful 8 x 10 Gold Tone Photograph.

We invite you to be our guests at the * * * hotel on * * * between the hours of * * * and * * *. *FREE PRIZES will be awarded to the three most photogenic children and girls.*

With orders of 12 or more 5 x 7 or larger photographs, we will give you one beautiful 8 x 10 colored picture FREE!

Members * * * Minnesota State Photographers Ass'n.

PAR. 4. By and through the use of the statements and representations hereinabove set forth, respondent has represented that cash awards of \$2,500.00 are made to the winners of his "\$2,500.00 Charming Child Contest," that all children between the ages of six months and ten years whose photographs are taken at respondent's studios are eligible for prizes thereunder, and that respondent's "\$2,500.00 Charming Child Contest" is conducted in a fair and impartial manner, with awards being made thereunder solely on the basis of merit.

In the manner aforesaid, respondent has further represented that various persons to whom certain of respondent's offers have been made were specially selected to receive them; that certain of the photographs offered for sale and sold by him are genuine Gold Tone photographs; that free prizes will be awarded to the three most photogenic children and girls appearing to be photographed at the place designated in the locality where the customer resides and that with the purchase of twelve or more pictures respondent will give a colored photograph free and without cost; and that respondent is a member of the Minnesota State Photographers Association.

PAR. 5. In truth and in fact, respondent's statements and representations are false and misleading. Respondent's "\$2,500.00 Charming Child Contest" was not one in which cash awards aggregating \$2,500.00 were made. On the contrary, respondent's prizes consisted of United States Savings Bonds in the face value of \$500.00, forty-eight prizes of hand-colored photographs valued by respondent as being worth \$15.00 each and representing a total of \$720.00, and twenty-four merchandise certificates awarded each week for a period of twelve weeks, which certificates had a value of \$4.00 each, good only in exchange for merchandise, for a total in this category of merchandise prizes of \$1,152.00. The aggregate value of all awards for respondent's "\$2,500.00 Charming Child Contest" represented \$2,372.00, including the United States bonds at face value and the hand-colored photograph prizes at the value arbitrarily fixed by respondent.

The representation that cash awards aggregating \$2,500.00 would be made by respondent in connection with such contest has stemmed not only from language appearing in the advertising, which expressly states that \$2,500.00 in cash prizes would be awarded, but has been conveyed, by implication as well, in other advertising matter used by respondent. Certain of the advertising identifying the contest by its title contains no reference whatsoever to the fact that the awards in major part were to be conferred in merchandise. In other advertising, the format accentuates in much larger type than that appearing

Findings

48 F. T. C.

in the body of the advertisement the words and figures "\$2,500.00 Charming Child Contest." It is the opinion of the Commission that this contest title constitutes a representation that any and all awards to be made thereunder will be conferred in money and that such connotation stems not from innuendo or suggestion but from the literal meaning of the title itself. The Commission is of the further view that the insertion, elsewhere in an advertisement for a contest identified as above, of additional language in reference to merchandise and other articles which are to be conferred serves not to explain but merely as a confusing contradiction to the title and does not suffice to dispel the erroneous impressions which a contest title containing no reference to merchandise may engender.

All children between the ages of six months and ten years who were photographed at respondent's studios have not been eligible for all or any of the prizes, as only those placing orders for photographs were considered, with some exceptions during the early stages of respondent's twelve-week "\$2,500.00 Charming Child Contest." The prizes were not impartially awarded but such awards were influenced by the size of the purchase order or the probability in instances of obtaining such an order. Those persons to whom the representation was made that they were especially selected to receive certain of respondent's offers have not been especially selected and such offers were available to all comers on an equal basis. Since approximately 1947, respondent has not produced any photographs by use of a finishing bath containing gold chloride or other gold salts and does not have facilities for such finishing. The term "gold-tone" has a definite meaning in the profession of photography and connotes that the afore-said finishing process has been used in producing a picture thus designated. The photographs which have been offered for sale and sold as Gold Tone photographs are not genuine gold-tone photographs.

The photographs which respondent's advertising states would be awarded as "Free" prizes were not gifts or gratuities, and in order to receive any of such prizes the purchase of other merchandise has been required. Such prizes have not been awarded to the three most photogenic children and girls but, on the contrary, it has been respondent's practice to restrict the number of winners selected in each town or community to but one winner. Respondent, moreover, does not give with the purchase of twelve or more photographs a colored photograph free and without cost, inasmuch as the cost of such photograph is covered in and embraced within the cost to the purchaser of the photographs ordered. There is no such organization as Minnesota State Photographers Association. There is, however, an association

known as Minnesota Professional Photographers Association, of which respondent was formerly a member. Such membership terminated on December 31, 1948. During the periods in which respondent's contests were being conducted and including the period in 1949 when various offers of 5" x 7" portraits at prices of 69¢, 79¢, and 89¢ were made in the advertising therefor, respondent was not a member of the Minnesota Professional Photographers Association.

PAR. 6. The use by respondent of the foregoing statements and representations and acts and practices has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public and the tendency and capacity to cause the public to purchase substantial quantities of respondent's merchandise as a result of the erroneous and mistaken beliefs so engendered.

CONCLUSION

(a) The acts and practices of the respondent, as found hereinabove, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

(b) Additional charges of the complaint pertain to other statements appearing in respondent's advertising and allege, in such connection, that respondent's photographers are not outstanding photographers as represented by respondent, that various offers are not in fact "special" offers at prices which are reduced from those customarily charged, that certain of the photographs are not "hand-colored" or "hand-colored with oil paints," and that respondent is not, as stated in the advertising, official photographer for the "Babee National Contest." Other charges are that respondent has engaged in unfair and deceptive acts and practices through the displaying of samples of photographs and frames to prospective customers which are allegedly of better grade and quality than those actually used in filling orders and through allegedly shipping frames to customers who ordered no frames, and relate also to alleged use of fictitious price lists and to alleged misuse of the word "guaranteed" without disclosing the extent and term of such warranty of satisfaction as may be offered to purchasers. The provisions of the initial decision of the trial examiner, in effect, provide for dismissal of all but one of these additional charges without prejudice. The Commission is of the view upon consideration of the record, including the contentions of counsel for respondent and counsel supporting the complaint as advanced in support of their appeals from said initial decision, that dismissal without

Order

48 F. T. C.

prejudice is warranted with respect to all of these additional charges, and the other herein contained accordingly thus provides.

ORDER

It is ordered, That the respondent H. Harold Becko, individually and trading as Harold's Studio, or trading under any other name, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of photographs, frames and similar merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or by implication, that a specified sum of money or monetary amount in awards will be made to winners in a contest unless the specified sum or amount in awards is made in cash.

(2) Failing to disclose in the advertising for any contest conducted by respondent the conditions and requirements which govern the selection of contest winners, including the extent to which such selection is controlled or influenced by the purchase of respondent's merchandise.

(3) Representing, directly or by implication, that recipients of any of respondent's promotional offers are especially selected.

(4) Using the term "Gold Tone" or any other word or words of similar import or meaning, either alone or in combination with any other word or words, to designate, describe or refer to a photographic reproduction which is not a product of a finishing process involving the use of a toning or developing bath which contains chloride of gold or other gold salts.

(5) Representing, directly or by implication, that awards in a specified number or value will be made in any contest unless such awards are actually conferred.

(6) Using the word "Free" or any other word or term of similar import or meaning to designate, describe or refer to any article of merchandise which is not in fact a gift or gratuity or which is not given without requiring the purchase of other merchandise or the performance of some service inuring, directly or indirectly, to the benefit of the respondent.

(7) Representing, directly or by implication, that respondent is a member of the Minnesota Photographers Association, of the Minnesota State Photographers Association or of the Minnesota Professional Photographers Association, or of any association or organization, unless such be true in fact.

412

Order

It is further ordered, That the charges of the complainant hereinbefore referred to and discussed in paragraph (b) of the Conclusion be, and the same hereby are, dismissed without prejudice to the right of the Commission to take such further or other action in the future as may be warranted by the then existing circumstances.

It is further ordered, That respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

Commissioner Mason not participating as to inhibition (6) of this order.

IN THE MATTER OF
INTERNATIONAL CELLUCOTTON PRODUCTS COMPANY

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5883. Complaint, May 24, 1951—Decision, Nov. 13, 1951

Where a corporation long engaged in the competitive interstate sale and distribution to wholesale and retail outlets of about seventy per cent of the sanitary napkins and about fifty per cent of the facial tissues purchased by the public in the United States; and through *del credere* arrangements or factory agreements with substantially all of the wholesale drug companies in the United States, and with many wholesale dry goods companies who retained 15 per cent on the single case selling price of the gross sales they made to retail outlets, and who were in competition with one another, as were many of their retail outlets—

Paid to said *del credere* agents or factors an additional special commission of 4½% semi-annually on all sales with the provisions that the factor, at respondent's request, conduct special promotions, including point of sale retail merchandising, and (a) furnish it with such information as it specified relating to the merchandising of products by the factor's customers, (b) permit attendance of its representatives at the factor's sales meetings, and (c) "to the extent that employees of Factor have received any special inducement in any form from Factor, or any other sources, for the sale or promotion of a commodity in competition with a product of [respondent] International provide an equivalent inducement to employees with International's competing product * * * hereunder";

With the result that its said factors, who were not required by it under said conditions to spend the entire amount of additional compensation thus received, and whose sales of said corporation's "Kotex" and "Kleenex" products to retail outlets were approximately three times as great as the combined sales of similar products of all of respondent's competitors, were reluctant to permit respondent's competitors to make promotional payments or inducements to said factors' employees, since that would require them to make equivalent payments or inducements to their own employees to promote respondent's products, not otherwise required, and, by reason of the ratio of respondent's sales to the sales of competing products, to expend approximately three times the amount granted to the factor or any of its employees for promoting the sanitary products of a competitor;

With tendency to prevent its said *del credere* agents or factors or any of their employees from promoting the sale of competitive sanitary products, and with effect of so doing in many cases:

Held, That such arrangements and agreements were all to the prejudice of the public; had a dangerous tendency to create a monopoly in said corporation in the sale and distribution of sanitary products in commerce; suppressed and lessened competition in the sale and distribution in commerce of such products; had a capacity and tendency to restrain unreasonably and did restrain unreasonably such commerce therein; and constituted an unfair method of competition in commerce.